

SUMMIT OWNERS' ASSOCIATION
8743 THOMAS DRIVE
PANAMA CITY BEACH, FLORIDA 32408
Phone (850) 235-8797 Fax (850) 235-1500

Bobs
New

AGREEMENT

This Agreement ("Agreement") is made and entered into as of this 24 day of MARCH, 2019, by and between THE SUMMIT OWNER'S ASSOCIATION, INC., a Florida not-for-profit corporation ("Association"), and BIKINI BOB'S BAR & GRILL, INC., a Florida corporation ("Operator").

WHEREAS, Association was organized to maintain, operate and manage that certain condominium together with certain time share accommodations and the common elements therein located in The Summit, a Condominium ("Condominium") located at 8743 Thomas Drive, Panama City Beach, Florida 32408 the Declaration of Condominium; Declaration of Covenants, Conditions and Restrictions; and other associated and connected documents, as may have been amended or modified from time to time (collectively "Condominium Documents");

WHEREAS, Association is the entity responsible for the operations and maintenance of The Summit, a Condominium ("Condominium");

WHEREAS, Operator desires to operate a restaurant/lounge within the Condominium ("Business") for the benefit of the members and guests of the Association in that certain portion of the Condominium more particularly described or depicted on Exhibit "A" attached hereto and made a part hereof ("Property"); and

WHEREAS, Association has agreed to the operation of the Business under the terms hereof.

NOW THEREFORE, in consideration of the promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Operation of Business

During the Term, as hereinafter defined, Operator shall use the Property, solely for the purpose of a restaurant/lounge providing food and beverage products including, but not limited to, oysters, shrimp, sandwiches, soft drinks, beer, wine, coffee and tea ("Business"). The Business shall not sell nor serve alcoholic beverages of any type or kind except beer and wine.

- A. Operator shall not use the Property for any purpose other than the Business without the prior written consent of the Association, which may be withheld in Association's sole discretion. Operator shall obtain and maintain during the Term all required licenses, including but not limited to beer and wine licenses and/or licenses for the operation of the Business and shall provide Association copies of the same. Operator shall provide supervision of the operation and maintenance of the Business and all employees, contractors or agents of Operator operating the Business. The Business shall only be for the use of Condominium owners and their guests and registered guests. Service of food or

drinks to any unit of the Condominium may be provided as a part of the Business. NO drinks shall be served by Operator in the hot tub area and no beer or wine shall be delivered to or served by Operator in a unit.

2. License

In facilitation of the operation of the Business, Association hereby licenses to Operator the right to use the Property under the terms hereof.

3. Term

- A. The initial term of this Agreement shall be for the period beginning on the earlier of March 1, 2019 or when the repairs resulting from Hurricane Michael are completed and a Certificate of Occupancy from the Property is issued and ending on November 1, 2025 unless terminated earlier pursuant to the terms hereof ("Term").
- B. In addition to any other remedy available hereunder and notwithstanding anything to the contrary. Herein, the Association may terminate this Agreement pursuant to the provisions of Chapter 718 of The Florida Statutes, as it may be amended or superseded.

4. Payments to Association

- A. During the first full year of the Term, Operator shall pay \$1,300 per month (excluding taxes) for the use of the Property for each month the Operator is operating or is required to operate the Business. Beginning on March 1, 2020 and as of March 1 of each year thereafter during the Term, the monthly installment amount paid shall increase by 3% for that next twelve month period above the amount paid for the preceding twelve month period. By way of example, the monthly installment amount for the twelve month period beginning on March 1, 2020, shall be \$1,339.00. Operator shall also pay to Association at the same time as the monthly installments all sales taxes due.
- B. Payment shall be due and payable in advance on the 1st day of each month of required operation of the Business set forth in Paragraph 1A and in addition, the 1st of each month of actual operation outside of the required operation time.
- C. Operator shall pay all amounts due hereunder in full without right of set off, deduction or demand, except as provided under applicable Florida laws.
- D. In the event any payment is not received by Association within five (5) calendar days of the due date, Operator shall pay a late charge of five percent (5%) of the outstanding principal amount. No endorsement on any check or letter accompanying payment shall be deemed an accord and satisfaction or binding upon Association. Association may accept prepayment of any amounts.
- E. If Operator makes rent payment with a worthless check, Association can require Operator to make all future payments by official check, cashier's check or money order and pay insufficient check fees in the amount of \$25.00 (not to exceed the amount prescribed by Florida Statute Section 68.065).

5. Security Deposit

- A. Operator has previously delivered to Association the sum One Thousand Dollars (\$1,000.00) as a security deposit pursuant to the prior agreement and such amount shall continue to be held by Association until termination of this Agreement. Operator agrees that Association may deposit the security deposit in Association's general operating account (non-interest bearing account) and may commingle such funds with other non-escrow deposits. Operator further acknowledges that Association shall have the free use of such funds subject to repayment to Operator as provided for herein. This security deposit shall secure the performance of Operator's obligations here under. At the termination of this Agreement, whether by lapse of time or otherwise, Operator shall be required to:
- (1) Leave the entire Property, including any bathrooms, closets, and cabinets clean.
 - (2) Remove and discard all debris and rubbish from the Property.
 - (3) Leave the Property in as good condition as existed at the beginning of this Agreement, normal wear and tear excepted.
 - (4) Leave a forwarding address with Association.
- B. The security deposit shall be refunded to Operator, provided the requirements set forth herein and those of Florida law are met, and shall be refunded less unpaid amounts owed or proper deductions for cleaning charges or damages including, but not limited to, attorneys' fees and costs.
- C. Unless Operator objects to the imposition of the Association's claim against the security deposit or the amount thereof within fifteen (15) days after receipt of the Association's notice of intention to impose a claim, Association may then deduct the amount of Association's claim and shall remit the balance of the deposit to Operator within thirty (30) days after the date of the notice of intention to impose a claim for damages.

6. Operator's Personal Property Taxes and Other Charges

- A. Operator shall pay for all license fees, rental and occupational taxes-and other governmental charges assessed against Operator by reason of Operator's use or occupancy of the Property.
- B. Operator agrees to pay, when due, all taxes assessed against Operator's personal property.

7. Utilities

Association shall pay for certain utilities, including, but not limited to water and sewer. Operator shall reimburse Association actual electric usage upon presentation by Association to Operator of the bills therefor. Operator shall obtain and pay for gas service. In no event shall Association be liable for the quality, quantity, failure, or interruption of utilities to the Property caused by third parties.

8. Condition of Property

Operator hereby covenants and represents the following:

- A. Operator has inspected and is familiar with the Property and the condition thereof.
- B. Operator agrees to be responsible for the maintenance and care of the Property and to keep the same clean and free from waste, rubbish and the like.
- C. Operator has thoroughly examined and inspected the Property and the condition thereof and has found the Property to be in good order and in tenable condition. Operator enters into this Agreement acknowledging the Property is taken "AS IS - WHERE IS" and "WITH ALL FAULTS".
- D. Operator acknowledges that no representations have been made by Association as to the condition of the Property or its suitability for any purpose and that no obligation or representation to make improvements and/or repairs to the Property have been assumed or made by the Association, except as expressly provided in this Agreement.

9. Improvements, Alterations, or Repairs

- A. Operator shall make improvements or alterations to the Property only with Association approval. In the case of an emergency and subject to Association's prior written consent, Operator is authorized to make repairs to the Property, at Operator's expense. All such repairs shall become the proportional property of Association's membership at the end of the Term.
- B. All work undertaken in or on the Property by Operator shall consist of quality material installed in workmanlike manner and in compliance with all applicable laws and regulations and shall be performed only by contractors or subcontractors. Said work shall be at Operator's sole risk and expense and Operator shall promptly pay all laborers, contractors and material men performing such work and furnishing material therefore for Operator. Operator agrees to indemnify and save harmless Association from all expenses, liens, claims or damages to either persons or property, including, without limitation, the Property stemming in any manner from such work. If any lien is filed by virtue of Operator's work, Operator shall cause the same to be discharged of record by payment, bond, order of court, or otherwise as required by law within 10 days after notice by Association. Association may, at Association's option, cause such discharge and Operator shall reimburse Association all of Association's costs and expenses expended therefore, upon billing for same. No mechanic's or material men's lien shall attach to the fee simple title to the Property as a result of the actions of Operator, and Operator's successors, assigns or agents. All such work including, without limitation, floor covering, lighting, ventilating and additional floors shall, upon termination of this Agreement, attach to the freehold and become and remain the proportional property of Association's membership at the expiration of the Term.

- (1) During the Term, Operator shall, at Operator's own expense, make any changes or alterations in the Property that may be necessary to cause the

Property to conform to all governmental and insurance underwriters' requirements (whether Operator's or Association's) adopted after the Agreement date.

- C. After completion of repairs from Hurricane Michael, Operator shall maintain in good repair all non-structural components of the Property including but not limited to the interior together with all mechanical equipment related thereto located in the Property, reasonable wear and tear excepted.
- D. Upon termination of this Agreement, should removal of Operator's personal property occasion any damage to the Property, Operator shall be responsible for such repair costs.
- E. If Operator and Operator's successors, assigns or agents refuse or neglect to commence and complete any of the foregoing promptly and adequately, Association may, but shall not be required to, make or complete the repairs and Operator, and Operator's successors, assigns or agents shall reimburse Association for the cost thereof upon Association furnishing an itemized billing to Operator, and Operator's successors, assigns or agents for same.

10. Default

If Operator (1) shall not pay any sums to Association at the time and in the manner stated, or (2) shall fail to keep and perform any other condition, term, stipulation or agreement herein contained on the part of Operator to be kept and performed (other than the payment of amounts due), or (3) shall allow or cause to be filed against Operator an involuntary petition of bankruptcy, or should Operator be adjudged a voluntary or involuntary bankruptcy, or make an assignment for the benefit of creditors, or should there be a receiver appointed to take charge of the Property either in state or federal court, or (4) shall cause or permit any impairment or waste to the Property or the security of Association, or shall have any execution or attachment issued out against Operator or the property of Operator and not vacated or removed by court order or bond or otherwise within thirty (30) days after issuance thereof, or (6) abandon the Property for more than five (5) consecutive days during the Term hereof except as modified by Paragraph 15, or (7) fail to operate the Business under such terms and conditions and during such times as required herein, then and in any such event, the Association shall be entitled to invoke any remedy available under law, including, but not limited to the following, all of which shall be deemed cumulative:

- A. Terminate this Agreement, resume possession of the Property for the Association's account, and recover immediately from Operator the difference between the amounts due under this Agreement and the fair rental value of the Property for the remainder of the term.
- B. Resume possession and re-lease or re-license the Property for the remainder of the Term for the account of the Operator and recover from the Operator, at the end of the Term or at the time of each payment becomes due under this Agreement as Association shall use due diligence to re-license the Property on the best terms reasonably available. Any costs incurred in re-licensing the Property, including but not limited to, repairs and renovations to make the Property suitable for re-licensing shall be additional amounts owed by Operator to Association.

- C. Declare the unpaid amount for the entire Term of this Agreement to be accelerated and immediately due and payable, the same to be collected by any procedure provided by law.
- D. In any event, the Association shall recover all expenses incurred by reason of the breach, including reasonable attorneys' fees.
- E. The election of one remedy shall not be deemed to bar the election of any other remedy.

11. Insurance and Indemnity

- A. Operator, at Operator's expense, agrees to keep in force during the Term, comprehensive, general liability insurance including, without limitation, bodily, personal and property damage relating to the Property on an occurrence basis in the minimum amount of One Million and No/100 dollars (\$1,000,000) extended coverage and all risk insurance on the Property, all in such amounts and with such companies as are acceptable to Association. Association and Operator shall be listed as co-insured's or Association shall be added as additional insured as their interests may appear, and the policy or policies shall contain endorsements that such insurance may not be canceled or amended with respect to Association (and such designees), by the insurance company except upon thirty (30) days' notice to Association. The provisions of this paragraph shall be applicable until the Agreement terminates or Operator has vacated the Property, whichever occurs later.
- B. Operator shall indemnify and save harmless Association from any claims, costs and demands, including but not limited to all attorneys' fees and costs, in connection with any injury or damage caused to any person or property arising out of Operator's use or occupancy of the Property except to the extent caused solely by the gross negligence or willful misconduct of Association.
- C. Operator shall reimburse Association for the proportionate share of the flood and property insurance for the Property as allocated by the insurance company(ies) or if no allocation by the insurance company(ies) then based upon the square footage of the Property compared to the overall square footage of the Condominium.

12. Damage

After completion of repairs from Hurricane Michael, Operator shall be responsible for the acts of all Operator's invitees, licensees, and guests and shall be responsible for all personal injuries and property damage caused by Operator's customers, invitees, licensees or guests both within the Property or in the immediate pool deck area. Operator shall pay for any damage within thirty (30) days of damage, or misuse by Operator or Operator's licensees of the Property or other Operator's property by intentional act, or physical assault by the Operator or personnel or agents, or third persons shall be grounds for termination of this Agreement.

13. Waste

No waste shall be committed by the Operator to or upon the Property, and at the end of the Term, the Property shall be delivered to Association in as good condition as at the commencement thereof, damage caused by ordinary wear and tear excepted.

14. Signs

Operator shall be permitted, with the prior written consent of Association's General Manager, to place signs, advertisements, awnings, marquees or other structures on the exterior of the Property.

15. Special Provisions

A. Although Operator may choose to close early, the Business shall not be open nor shall patrons be allowed to remain in the Property after 12:00 am. The Business shall not open earlier than 7:00 am. No beer or wine shall be served between the nightly designated closing time for the Business (or such other time if the Association directs the Business to close) and either 7:00 am on Monday through Saturday or before the time authorized by law on Sunday. Operator may temporarily close the Business at Operator's direction; however, rent shall still be owed.

B. In the event of any complaint by owners, guests or tenants at the Condominium (or any adjacent property) relating to the operation of the Business, including but not limited to noise, Association shall promptly advise the manager of the Business on duty at the time of the complaint and said situation causing the complaint to the sole satisfaction of Association. Failure of Operator or Operator's employees, contractors or agents to rectify the situation causing the complaint to the sole satisfaction of Association may result in Association closing the operation of the Business for the day of the occurrence without any claim by Operator against Association relating to the closing. Continued complaints may result in termination of this Agreement at the sole discretion of Association.

C. Operator may provide television and/or soft background music for the enjoyment of customers, provided that such entertainment does not pose a nuisance to the owners, guests and tenants at the Condominium and that the volume of such entertainment does not constitute a nuisance or violate the quiet time of the owners, guests or tenants of the Condominium. Live entertainment such as bands and/or karaoke shall NOT be permitted without prior approval of Association.

D. In addition to any other rights and remedies of Association hereunder, a violation of any term or provision of this Paragraph 15 shall result in a fine of \$100 per day, payable in full to Association unless corrected by Operator within three (3) days of notification. Upon the third violation of this Paragraph 15, Association shall have the right to terminate this Agreement for cause.

E. Operator agrees to abide by and observe and cause all of Operator's employees, contractors, agents, guests, invitees and licensees to comply with all State, Federal and local laws and all provisions under the Declaration of Condominium governing the Condominium and all Rules and Regulations established from time

to time by Association and Association's insurance carrier with respect to the operation of the Business and the Property. Operator shall ensure that all persons on the Property shall be clothed; i.e., no Nudity or partial nudity will be allowed and it will be deemed offensive by Association and shall not be allowed. Operator shall not conduct nor allow to be conducted on the Property any wet t-shirt contests or other similar types of contests or behavior.

- F. During the Term, Operator shall possess and post in public view a current Health Inspection Report.
- G. All uniforms or other clothing or apparel to be worn by employees or contractors of Operator while on the Property must be in good taste as determined by Association in Association's sole discretion.
- H. Operator shall not advertise or promote nor conduct or allow to be conducted any "hot tub happy hour" or any other use of a hot tub located at the Condominium by Operator's patrons.
- I. Owners and employees of the Association shall be provided a special discount throughout the Term.
- J. Operator shall be allowed, but not required, to the following with approval of the Association's General Manager:
 - (1) Operator supplied sign will be maintained in the pool area.
 - (2) Operator supplied and maintained one-page menu in each elevator.
 - (3) An advertising banner, no larger than 50 sq. ft., supplied by operator, may be placed on the roof of the subject building.
 - (4) A sign, no larger than 50 sq. ft., supplied by the operator, advertising the business name, may be placed across the front of the building.
 - (5) Operator will supply a one-page menu to be inserted in check in packet.
- K. The existing vent/hood system, which includes a 10-foot Exhaust Hood System, Make Up Air System, and an Annul Fire Protection System, will upon the termination of this Agreement meet the required Florida codes and be left on the Property as the property of the Association.

16. Fire and Other Casualty

- A. During the Term, should the Property or any part thereof be damaged or destroyed by fire or other casualty covered by insurance policies applicable to the Property, Association shall, except as otherwise provided herein, and to the extent it recovers proceeds from such insurance, repair and/or rebuild the improvements on the Property with reasonable diligence. Association shall not be obligated to repair, rebuild, or replace any property belonging to Operator or any improvements on the Property made or furnished by Operator. If there should be interference with the operation of Operator's business in or about the Property as a result of such damage or destruction which requires Operator to temporarily and/or partially close its Business to the public, the amounts owed to Association shall abate to the extent of interference. Unless this Agreement is terminated by Association as hereinafter provided, Operator shall, to the extent

it recovers proceeds from insurance, repair, redecorate and re-fixture the Property and restock the contents thereof in a manner and to at least a condition equal to that existing prior to such damage or destruction, and the proceeds of all insurance carried by Operator on its property, decorations, improvements, fixtures and contents in the Property shall be held in trust by Operator for such purposes.

- B. Notwithstanding anything to the contrary contained in this paragraph or elsewhere in this Agreement, Association, at its option, may terminate this Agreement on thirty (30) days' notice to Operator, given within one hundred twenty (120) days after the occurrence of any damage or destruction if the Property be damaged or destroyed as a result 'of a risk which is not covered by Association's insurance
- C. The rent shall abate in the proportionate amount of the Property that cannot be occupied by Operator or to the extent that the Business is affected, whichever is greater. In the event Association repairs the damage, the full rent shall be owed.

17. Licenses

Operator shall obtain and maintain during the Term licenses including but not limited to alcoholic beverage licenses required by the State of Florida or other municipal, state or federal authority in the operation of the Business and use of the Property. Operator shall provide a copy of all such licenses to Association.

18. Ordinances and Statutes

Operator shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereinafter be in force, pertaining to the operation of the Business and the use of the Property. Operator agrees to hold harmless and indemnify Association from and for all liability, fines, penalties, costs and attorneys' fees arising out of any violations or noncompliance with the same.

19. Entry and Inspection

Operator shall permit Association to enter the Property at such times and without notice for the purpose of inspecting the Property, or showing the same to prospective tenants, or for making necessary maintenance or repairs. If during the course of such inspection it is discovered that Operator has, or is in the process of causing damage to the Property or any items furnished by the Association, the Association may advise Operator in writing of such damage and of the amount of money which, in the opinion of the Association, it will cost for repairs and Operator shall, within seven (7) days after such written notice, either make such repairs or deposit with the Association the amount of money specified in the notice.

20. Assignment

This Agreement shall not be assignable by Operator without the prior consent of Association, which consent may not be unreasonably withheld. In the event of any assignment, the assignee shall assume all of the duties and obligations of Operator hereunder.

21. Remedies

All rights and remedies conferred hereunder upon the parties shall be cumulative and in addition to those available under the laws of the State of Florida or the United States of America.

22. Notices

All notices, requests and other communications to be made pursuant to the terms of this Agreement shall be made as follows:

If to Association:

THE SUMMIT OWNERS ASSOCIATION, INC.

General Manager

8743 Thomas Drive

Panama City Beach, Florida 32408

If to Operator:

BIKINI BOB'S BAR AND GRILL, INC.

8743 Thomas Drive Unit 1515

Panama City Beach, Fl. 32408

If any party hereto elects to have notices sent to an address other than as specified herein, the party shall notify all of the parties of such other address. All notices, requests and other communications provided pursuant to the terms of this Agreement shall be deemed to have been sufficiently given for all purposes if hand-delivered or sent by U. S. Mail, return receipt requested, by fax or by overnight courier service such as Federal Express.

23. Surrender of Property & Holding Over

A. Operator agrees to deliver up and surrender to Association possession of the Property and all keys upon termination of this Agreement, in as good condition and repair as the same shall be at the Term commencement or may have been put by Association during the continuance thereof, ordinary wear and tear excepted. Nothing herein shall be construed as relieving Operator of any of Operator's maintenance, repair or replacement obligations under this Agreement.

B. If Operator shall hold over or otherwise remain in all or any part of the Property after the expiration of the Term or fail to completely remove Operator's personal property, then Operator shall owe Association double the amount set forth in Paragraph 4.

24. Entire Agreement

It is expressly understood and agreed by and between the parties hereto that this Agreement sets forth all of the terms, agreements, conditions, and understandings between Association and Operator relative to the Property and that there are no terms, agreements, conditions, or understandings, either oral or written, between them other than are herein set forth. It is further understood and agreed that, except as herein otherwise provided, no subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon Association or Operator unless reduced to writing and executed by both the President of the

Association and Operator. All verbal communications directed to Association shall only be to a member of the Association's Board of Directors or the authorized agent designated by the Board of Directors.

25. Interpretation

This Agreement shall be interpreted according to the laws of the State of Florida.

26. Jurisdiction and Venue

Jurisdiction and venue for any legal action brought in connection with this Agreement shall be in Bay County, Florida, and the parties expressly waive their right to venue elsewhere.

27. Usage

Whenever the context permits, singular shall include plural and one gender shall include all. For purposes of convenience, the neuter gender has been used in lieu of any masculine or feminine references.

28. Time

Time is of the essence in this Agreement.

29. Attorneys' Fees

In the event of any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs at all trial and appellate levels and at any mediation or arbitration

30. Exhibits

All exhibits appended hereto are incorporated in and made a part of this Agreement.

31. Counterparts

This Agreement may be signed in two or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document

32. Recording

This Agreement shall not be recorded by Operator without the prior written consent of Association.

33. Waiver

No failure of Association to enforce any Term hereof shall be deemed a waiver, nor shall any acceptance of a partial payment of amounts owed be deemed a waiver of

Association's right to the full amount thereof.

34. Prior Agreement

The prior Agreement between the parties relating to the Property as amended shall be terminated on the beginning of the Term in this Agreement.

35. Radon Gas

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from your county public health unit.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date and year first above written.

Association:

The Summit Owners Association, Inc.,
a Florida not-for-profit corporation

By: Theresa P. Lowe 3/7/19
Print Name: Theresa P. Lowe
Its: President

Witness Signature: Anita Nuckolls
Print Name: Anita Nuckolls

Lessee:

Bikini Bob's Bar & Grill, Inc., a Florida
corporation

By: Robert E. Cabe, Jr.
Robert E. Cabe, Jr., as President

Witness Signature: Terry Kennedy
Print Name: Terry Kennedy

GUARANTY

The undersigned principal of Operator hereby unconditionally guaranties the full and faithful performance of and all payments due from Operator under all terms and conditions in the foregoing Agreement. The undersigned hereby waives notice of any breach or default by Operator, and hereby further waives presentment, demand, notice of dishonor and protest with respect to any instrument now or hereafter evidencing any amounts owed by Operator. The undersigned agrees to pay attorneys' fees and legal costs That arises, in the event that the Association pursues the undersigned under this guaranty.

By: Robert E. Cabe, Jr.
Robert E. Cabe, Jr.